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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1020, 1023, 1024, and 1026

[Docket Number: FinCEN-2014-0001]

Notice of Availability of Regulatory Impact Assessment and Initial Regulatory Flexibility Analysis Regarding the Customer Due Diligence Requirements for Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Department of the Treasury.

ACTION: Notice of availability; Regulatory Impact Assessment and Initial Regulatory Flexibility Analysis.

SUMMARY: By this notice, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) announces the availability of two related documents that are part of the Customer Due Diligence Requirements for Financial Institutions Proposed Rulemaking: A Regulatory Impact Assessment (RIA) and an Initial Regulatory Flexibility Analysis (IRFA).

DATES: Written comments on the RIA and IRFA must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: The RIA and IRFA are available on FinCEN's Web site at <http://www.fincen.gov> and at <http://www.regulations.gov>. Comments on the RIA and IRFA may be submitted, identified by Regulatory Identification Number (RIN) 1506-AB25, by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Include RIN 1506-AB25 in the submission. Refer to Docket Number FINCEN–2014–0001.
- Mail: FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506-AB25 in the body of the text. Please submit comments by one method only. All comments submitted in response to this Notice of Availability will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.
- Inspection of comments: The public dockets for FinCEN can be found at Regulations.gov. Federal Register notices published by FinCEN are searchable by docket number, RIN, or document title, among other things, and the docket number, RIN, and title may be found at the beginning of the notice. FinCEN uses the electronic, Internet-accessible dockets at Regulations.gov as their complete, official-record docket; all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed in the docket. In general, FinCEN will make all comments publicly available by posting them on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: FinCEN’s Resource Center, (800) 767-2825.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary has delegated to the Director of FinCEN the authority to implement, administer and enforce compliance with the Bank Secrecy Act (BSA) and associated

regulations.¹ FinCEN is authorized to impose anti-money laundering (AML) program requirements on financial institutions,² as well as to require financial institutions to maintain procedures to ensure compliance with the BSA and the regulations promulgated thereunder or to guard against money laundering.³

II. The Notice of Proposed Rulemaking

On August 4, 2014, FinCEN published a Notice of Proposed Rulemaking (NPRM) in the Federal Register entitled “Customer Due Diligence Requirements for Financial Institutions,” that would amend existing BSA regulations to clarify and strengthen customer due diligence (CDD) requirements for banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities (collectively covered financial institutions). It also proposed to impose a new requirement under the BSA to identify the beneficial owners of legal entity customers, subject to certain exemptions.

III. Comments

The comment period for the proposed rule closed on October 3, 2014. FinCEN received a total of 135 comments representing a wide range of views covering most aspects of the NPRM. A large number of commenters asserted that the NPRM lacked sufficient data to support its estimate of costs and substantially underestimated implementation and compliance-related costs.

A. Regulatory Impact Assessment

¹ Treasury Order 180-01 (Jul. 1, 2014).

² 31 U.S.C. 5318(h)(2).

³ 31 U.S.C. 5318(a)(2).

The primary purpose of the proposed CDD requirements is to assist financial investigations by law enforcement in order to severely impair criminals' ability to exploit the anonymity provided by the use of legal entities to engage in financial crimes including fraud, money laundering, terrorist financing, corruption, and sanctions evasion.

Based on comments and information received during further outreach to some financial institutions that provided comments on the proposal, FinCEN determined that the implementation and compliance-related costs may exceed \$100 million annually, making this rulemaking an "economically significant regulatory action." In such cases, Executive Orders 13563 and 12866 require agencies to conduct an RIA, which the agencies must publish for comment. At FinCEN's request, Treasury's Office of Economic Policy conducted an RIA of the proposed rule, developed in accordance with these Executive Orders, which evaluates the economic costs and benefits of the CDD rule and its alternatives. According to Office of Management and Budget (OMB) guidance, an RIA must contain the following three basic elements: (1) a statement of the need for the regulatory action; (2) a clear identification of a range of regulatory approaches; and (3) an estimate of the benefits and costs—both quantitative and qualitative—of the proposed regulatory action and its alternatives.

The *2015 National Money Laundering Risk Assessment* estimated the annual volume of money laundering or illicit proceeds generated in the United States due to financial crimes at \$300 billion. The RIA for the proposed CDD rule provides an economic rationale for the rulemaking, and outlines the anticipated costs and benefits of the proposal. Because some of the important benefits and costs generated by the proposed rule cannot be fully quantified, the RIA employs a "threshold" or "breakeven" analysis to evaluate how minimally effective the proposed rule would have to be such that its benefits would just justify its costs. Such analysis is utilized

to evaluate how likely it is that a proposed policy change would create a net benefit to society in instances where the costs or benefits are not fully quantifiable.⁴

To disrupt the flow of illicit proceeds more effectively, the proposed CDD rule would provide Federal and state regulators and law enforcement with easier access to beneficial ownership information of legal entities—*i.e.*, the natural persons who own or control these entities—to support law enforcement and counter-terrorism investigations. FinCEN believes that the proposed CDD rule would lead to a meaningful reduction in the flow of illicit proceeds in the United States. For example, shell and front companies are often used to launder proceeds of drug trafficking and fraud. The imposition of a beneficial ownership requirement, through the proposed CDD rule, would provide increased transparency into shell or front companies, thereby assisting law enforcement and regulators to identify the bad actors behind such companies and providing a greater deterrent to their use with respect to illicit gains. Furthermore, FinCEN believes that the proposed CDD rule would lead to a reduction in other illicit activities, the costs of which can run into the billions of dollars in terms of property destruction, foregone tax revenues, and even loss of life when considering the violent actions undertaken by terrorist and other criminal organizations that are facilitated by the movement of funds through legal entities.

Although the potential benefits of the rule are difficult to quantify, the breakeven analysis utilized in the RIA indicates that the proposed CDD rule would only need to generate a very modest relative decrease in illicit activity to justify the costs it would impose. Taking into account only the estimated annual flow of illicit funds in the United States of \$300 billion, the breakeven analysis allows FinCEN to conservatively conclude that the CDD rule would need to

⁴ See Custom and Border Protection, Department of Homeland Security, “Importer Security Filings and Additional Carrier Requirements,” 73 FR 71730 (November 25, 2008). See also Customs and Border Protection, Department of Homeland Security, “Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels,” 72 FR 48320 (August 23, 2007).

reduce the estimated annual flow of illicit proceeds by only 0.45 percent (in each year of 2016-2025, the years covered by the RIA) in order to justify the costs the rule would impose over a ten-year period. FinCEN expects more benefits given that greater transparency would reduce illicit activity in other ways, as referenced above.

B. Initial Regulatory Flexibility Analysis

The IRFA evaluates the economic impact of the CDD rule on small entities, and was developed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601-612. The Regulatory Flexibility Act requires agencies to assess the impact of regulatory action on small entities, and is a requirement independent from the RIA (although the IRFA relies in part on the analysis conducted in the RIA). As a result of this analysis, Treasury and FinCEN continue to believe that, while the proposed rule would apply to a substantial number of small entities, it would not have a significant economic impact on a substantial number of small entities.

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